THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.791 and 2056 of 2005

Dated: 14-12-2006

Between:

V. Appanna and others.

..... PETITIONERS

AND

The District Collector, Visakhapatnam, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION Nos.791 and 2056 of 2005

COMMON ORDER:

As the point involved in these two writ petitions is common, both are disposed of by this order.

The petitioners in these writ petitions i.e., petitioners 1 and 2 and husbands of petitioners 3 and 4 in W.P.No.791 of 2005 and sole petitioner in the other writ petition, being W.P.No.2056 of 2005, are ex-servicemen. It is their case that on an application made by them, the then Tahsildar, Visakhapatnam, assigned agricultural land in survey Nos.336 part, 348, 348/1, 349 and 350/3 to the petitioners admeasuring Acs.4.00 to Acs.5.00 each under ex-servicemen quota and D-Form pattas were issued. They allegedly entered into possession and cultivating the land. G.O.Ms.No.1117 dated 11-11-1993 issued by the Government of Andhra Pradesh enables the ex-servicemen assignee to alienate the land after a period of ten years from the date of assignment. The petitioners in W.P.No.792 of 2005, therefore, approached the District Collector, respondent No.1, sometime in December, 2004 seeking permission. Their applications were not considered but respondent No.1 allegedly directed the Mandal Revenue Officer (MRO), respondent No.2, to take possession of the land. Respondent No.3 entered the land of the petitioners in both the writ petitions and threatened to evict them by use of force. Therefore, the petitioners filed these writ petitions seeking writ of Mandamus declaring the action of respondent No.1 in not passing orders on the applications made by the petitioners for alienation and also declaring the action of MRO in trying to evict them by use of force.

This Court, while admitting the writ petitions, ordered *status quo*. In both the matters, respondent No.1 and MRO have moved applications for vacating the interim orders. As a short point is involved, the matters are heard finally and are being disposed of at the interlocutory stage. In the counter-affidavits filed by MRO, similar averments are made. It is the case of the respondents that the land in survey No.336 was classified as Hill Poramboke belonging to the Government and that the land in survey Nos.348, 350/2, 350/3 and 352/3 was classified as assessed waste dry belonging to the Government, which was never assigned to any person. It is also stated that the land in question is free from encroachment and is in possession of the Government. After receiving the applications of the petitioners for No Objection Certificate in terms of G.O.Ms.No.1117 dated 11.11.1993, an enquiry was conducted by the Joint Collector, Visakhapatnam. It was found that the pattas relied on by the petitioners

are fabricated and forged. Therefore, a criminal complaint, being F.I.R.No.13 of 2005 of P.S. Bheemunipatnam is registered and investigation is pending. The other allegations made by the petitioners are denied.

This Court has heard the learned counsel for the petitioners and the learned Assistant Government Pleader for Revenue (Assignment). There is a serious dispute as to whether the copies of the pattas which are annexed to the writ petitions are genuine as contended by the learned counsel for the petitioners or fabricated and forged as alleged by the respondents. A criminal complaint has already been lodged and the investigation is pending. Therefore, it would be improper for this Court to go into the issue at this stage. In a similar background, this Court today has disposed of a batch of writ petitions, being W.P.No.2315 of 2005 and batch, with observations and directions.

Following the same, these writ petitions are also disposed of in the following manner.

MRO shall conduct a detailed enquiry into all assignments allegedly made in favour of Ex-servicemen. If it is ultimately found that D-Form pattas are fabricated and forged, appropriate action shall be taken against all those responsible for such fabrication of forged D-Form pattas and the petitioners cannot be evicted unless appropriate due process of law is followed under the Andhra Pradesh Land Encroachment Act, 1905. In case, it is found that the D-Form pattas granted to the petitioners are genuine, the respondents shall not take any further action against the petitioners. No costs.

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(**V.V.S.RAO, J**)

14th December, 2006
ghn